

Senate Bill No. 512

Passed the Senate August 31, 2016

Secretary of the Senate

Passed the Assembly August 29, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 306, 311.5, 910.1, 1701, 1801.3, 1802, 1804, and 1808 of, to add Sections 1711, 1802.4, and 1803.1 to, and to repeal and add Section 910 of, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 512, Hill. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The Public Utilities Act provides that the office of the commission shall be in the City and County of San Francisco, that the office always be open, except on legal holidays and nonjudicial days, and that the commission hold its sessions at least once in each calendar month in the City and County of San Francisco.

This bill would require that the commission hold its sessions at least once in each calendar month, without specifying the location.

(2) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy, including rulemakings and investigations which may establish rules affecting an entire industry; adjudication cases are enforcement cases and complaints except those challenging the reasonableness of any rates or charges; and ratesetting cases are cases in which rates are established for a specific company. Existing law requires the commission to publish and maintain certain documents on the Internet, including a docket card that lists all documents filed and all decisions or rulings issued in those proceedings, as provided.

This bill would make the Administrative Adjudication Code of Ethics applicable to administrative law judges of the commission. Except in adjudication cases, the bill would require the commission, before determining the scope of the proceeding, where

feasible and appropriate, to seek the participation of those who are likely to be affected by a decision in the proceeding. The bill would, until January 1, 2020, require the Policy and Planning Division of the commission to undertake one or more studies of outreach efforts undertaken by other state and federal utility regulatory bodies and to make recommendations to the commission to promote effective outreach, including metrics for use in evaluating success. The bill would require the commission to include a docket card that lists the public versions of all prepared oral and written testimony and advice letter filings, protests, and responses on its Internet Web site. The bill would require the commission to make additional information available on the Internet, including information on how members of the public and ratepayers can gain access to the commission's ratemaking process.

(3) The Public Utilities Act requires the commission to develop, publish, and annually update an annual workplan that does all of the following: (A) describes in clear detail the scheduled ratemaking proceedings and other decisions that may be considered by the commission during the calendar year, (B) includes information on how members of the public and ratepayers can gain access to the commission's ratemaking process and information regarding the specific matters to be decided, (C) includes information on the operation of the office of the public advisor and identifies the names and telephone numbers of those contact persons responsible for specific cases and matters to be decided, and (D) includes a statement that specifies activities that the commission proposes to reduce the costs of, and rates for, energy, including electricity, and for improving the competitive opportunities for state agriculture and other rural energy consumers. The act requires the commission to submit the workplan to the Governor and Legislature by February 1 of each year.

This bill would require the commission to develop, publish, and annually update a report that contains certain specified information, as provided, and would expand the requirement that the workplan, as part of that report, describe in clear detail the scheduled proceedings that may be considered by the commission during the calendar year to include all proceedings and not just ratemaking proceedings. The bill would additionally require that the report include performance criteria for the commission and executive director and evaluate the performance of the executive director

during the previous year based on the criteria established in the prior year's workplan. The bill would require the report to include a list of the public meetings held outside San Francisco in the previous year and a schedule of meetings anticipated to be held outside San Francisco during the upcoming year. The bill would require the commission to post the report in a conspicuous area of its Internet Web site and disseminate the information in the report, as provided.

(4) The Public Utilities Act requires the commission to submit an annual report to the Legislature on the number of cases where resolution exceeded the time periods prescribed in scoping memos and the days that commissioners presided in hearings.

This bill would delete the requirement that the report include the number of cases where resolution exceeded the time periods prescribed in scoping memos and instead would require the commission to annually submit a report to the Legislature on the commission's timeliness in resolving cases and include information on the disposition of applications for rehearings. The bill would require that the report include the number of scoping memos issued in each proceeding and the number of orders issued extending the statutory deadlines for all adjudication, ratesetting, and quasi-legislative cases.

(5) The Public Utilities Act provides intervenor compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers or their representatives for participation or intervention in any proceeding of the commission based, in part, upon whether the intervenor would experience significant financial hardship and makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision. Existing law precludes a local government entity from receiving intervenor compensation by excluding them from the definition of a "customer" for purposes of the intervenor compensation provisions.

This bill would state the intent of the Legislature that intervenors be compensated for making a substantial contribution to proceedings of the commission, regardless of whether a settlement agreement is reached. The bill would permit intervenor compensation to be paid to cities, counties, and cities and counties that intervene or participate in commission proceedings to the extent that their involvement was for the purpose of protecting

health and safety, under specified circumstances. The bill would make conforming changes.

Existing law requires a public utility that is the subject of the hearing, investigation, or proceeding in which intervenor fees are awarded to pay those intervenor fees within 30 days and makes the failure to do so a crime.

By expanding the obligation of a public utility to pay intervenor fees to an eligible local government entity, the bill would impose a state-mandated local program by expanding the application of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 306 of the Public Utilities Code is amended to read:

306. (a) The office of the commission shall be in the City and County of San Francisco. The office shall always be open, legal holidays and nonjudicial days excepted. The commission shall hold its sessions at least once in each calendar month. The commission may also meet at such other times and in such places as may be expedient and necessary for the proper performance of its duties, and for that purpose may rent quarters or offices.

(b) The meetings of the commission shall be open and public in accordance with the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

In addition to the requirements of Section 11125 of the Government Code, the commission shall include in its notice of meetings the agenda of business to be transacted, and no item of business shall be added to the agenda subsequent to the notice in the absence of an unforeseen emergency situation. A rate increase shall not constitute an unforeseen emergency situation. As used in this subdivision, “meeting” shall include all investigations, proceedings, and showings required by law to be open and public.

(c) The commission shall have a seal, bearing the inscription “Public Utilities Commission State of California.” The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct.

(d) The commission may procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus, and appliances.

SEC. 2. Section 311.5 of the Public Utilities Code is amended to read:

311.5. (a) (1) Prior to commencement of any meeting at which commissioners vote on items on the public agenda, the commission shall make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered by the commission for action or decision at a commission meeting.

(2) In addition, the commission shall publish the agenda, agenda item documents, and adopted decisions in a manner that makes copies of them easily available to the public, including publishing those documents on the Internet. Publication of the agenda and agenda item documents shall occur on the Internet at the same time as the written agenda and agenda item documents are made available to the public.

(b) The commission shall publish and maintain the following documents on the Internet:

(1) Each of the commission’s proposed and alternate proposed decisions and resolutions, until the decision or resolution is adopted and published.

(2) Each of the commission’s adopted decisions and resolutions. The publication shall occur within 10 days of the adoption of each decision or resolution by the commission.

(3) The then-current version of the commission’s general orders and Rules of Practice and Procedure.

(4) Each of the commission’s rulings. The commission shall maintain those rulings on its Internet Web site until final disposition, including disposition of any judicial appeals, of the respective proceedings in which the rulings were issued.

(5) A docket card that lists, by title and date of filing or issuance, all documents filed and all decisions or rulings issued in those proceedings, including the public versions of all prepared oral and written testimony and advice letter filings, protests, and responses.

The commission shall maintain the docket card until final disposition, including disposition of any judicial appeals, of the corresponding proceedings.

(c) The commission shall make the following information available on the Internet:

(1) Information on how members of the public and ratepayers can gain access to the commission's ratemaking process and information regarding the specific matters to be decided.

(2) Information on the operation of the office of the public advisor established in Section 321 and how the public advisor can connect members of the public to persons responsible for specific cases and matters to be decided.

SEC. 3. Section 910 of the Public Utilities Code is repealed.

SEC. 4. Section 910 is added to the Public Utilities Code, to read:

910. (a) The commission shall develop, publish, and annually update a report that contains all of the following information:

(1) A workplan that describes in clear detail the scheduled proceedings and other decisions that may be considered by the commission during the calendar year.

(2) Performance criteria for the commission and the executive director, and an evaluation of the performance of the executive director during the previous year based on criteria established in the prior year's workplan.

(3) An accounting of the commission's transactions and proceedings from the prior year, together with other facts, suggestions, and recommendations that the commission deems of value to the people of the state. The accounting shall include the activities that the commission has taken, and plans to take, to reduce the costs of, and the rates for, water and energy, including electricity, to improve the competitiveness of the state's industries, including agriculture, and, to the extent possible, shall include suggestions and recommendations for the reduction of those costs and rates.

(4) A description of activities taken and processes instituted to both solicit the input of customers from diverse regions of the state in ratesetting and quasi-legislative proceedings and to process that input in a way that makes it usable in commission decisionmaking. The report shall describe the successes and challenges of these processes, the effect of resource constraints, and efforts to be made

during the calendar year to further the goal of increased public participation.

(5) A list of the public meetings held outside San Francisco in the previous year, and a schedule of meetings anticipated to be held outside San Francisco during the coming year.

(b) (1) The commission shall submit the report required pursuant to subdivision (a) to the Governor and the Legislature, in compliance with Section 9795 of the Government Code, no later than February 1 of each year.

(2) The commission shall post the report in a conspicuous area of its Internet Web site and shall have a program to disseminate the information in the report using computer mailing lists to provide regular updates on the information to those members of the public and organizations that request that information.

SEC. 5. Section 910.1 of the Public Utilities Code is amended to read:

910.1. The commission shall annually submit a report to the Legislature on the commission's timeliness in resolving cases, information on the disposition of applications for rehearings, and the days that commissioners presided in hearings. The report shall include the number of scoping memos issued in each proceeding and the number of orders issued extending the statutory deadlines pursuant to subdivision (e) of Section 1701.2, for all adjudication cases, and pursuant to subdivision (a) of Section 1701.5, for all ratesetting or quasi-legislative cases.

SEC. 6. Section 1701 of the Public Utilities Code is amended to read:

1701. (a) All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.

(b) Notwithstanding Section 11425.10 of the Government Code, Articles 1 to 15, inclusive, of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code do not apply to a hearing by the commission under this code. The Administrative Adjudication Code of Ethics (Article 16 (commencing with Section 11475) of Chapter 4.5 of Part 1 of

Division 3 of Title 2 of the Government Code) shall apply to administrative law judges of the commission.

SEC. 7. Section 1711 is added to the Public Utilities Code, to read:

1711. (a) Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

(b) (1) The Policy and Planning Division of the commission shall undertake one or more studies of outreach efforts undertaken by other state and federal utility regulatory bodies and make recommendations to the commission to promote effective outreach, including metrics for use in evaluating success.

(2) This subdivision shall remain in effect only until January 1, 2020, and shall have no force or effect on or after that date, unless a later enacted statute that is chaptered before January 1, 2020, deletes or extends that date.

SEC. 8. Section 1801.3 of the Public Utilities Code is amended to read:

1801.3. It is the intent of the Legislature that:

(a) The provisions of this article shall apply to all formal proceedings of the commission involving electrical, gas, water, and telephone utilities.

(b) The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.

(c) The process for finding eligibility for intervenor compensation be streamlined, by simplifying the preliminary showing by an intervenor of issues, budget, and costs.

(d) Intervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions, regardless of whether a settlement agreement is reached.

(e) Intervenor compensation be awarded to eligible intervenors in a timely manner, within a reasonable period after the intervenor has made the substantial contribution to a proceeding that is the basis for the compensation award.

(f) This article shall be administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding.

SEC. 9. Section 1802 of the Public Utilities Code is amended to read:

1802. As used in this article:

(a) “Compensation” means payment for all or part, as determined by the commission, of reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) (1) “Customer” means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a customer.

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

(2) “Customer” does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission’s opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.

(c) “Expert witness fees” means recorded or billed costs incurred by a customer for an expert witness.

(d) “Eligible local government entity” means a city, county, or city and county that is not a publicly owned public utility that intervenes or participates in a commission proceeding for the purpose of protecting the health and safety of the residents within the entity’s jurisdiction following a catastrophic material loss suffered by its residents either in significant damage to infrastructure or loss of life and property, or both, as a direct result of public utility infrastructure.

(e) “Other reasonable costs” means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(f) “Party” means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(g) “Proceeding” means an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

(h) “Significant financial hardship” means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(i) “Small commercial customer” means any nonresidential customer with a maximum peak demand of less than 50 kilowatts. The commission may establish rules to modify or change the definition of “small commercial customer,” including use of criteria other than a peak demand threshold, if the commission determines that the modification or change will promote participation in proceedings at the commission by organizations representing small businesses, without incorporating large commercial and industrial customers.

(j) “Substantial contribution” means that, in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

SEC. 10. Section 1802.4 is added to the Public Utilities Code, to read:

1802.4. An eligible local government entity is eligible for an award of compensation pursuant to this article for its involvement to the extent that the involvement was for the purpose of protecting health and safety within the entity's jurisdiction and to the extent that the involvement was germane to the material loss suffered by its residents.

SEC. 11. Section 1803.1 is added to the Public Utilities Code, to read:

1803.1. The commission shall adopt a policy to allow reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to an eligible local government entity that complies with Section 1804 and satisfies all of the following requirements:

(a) The entity's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.

(b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.

(c) The subject of the hearing or proceeding is the result of a triggering event, as determined by the commission, that significantly impacted the residents of the local government entity.

SEC. 12. Section 1804 of the Public Utilities Code is amended to read:

1804. (a) (1) A customer who, or eligible local government entity that, intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation. In cases where no prehearing conference is scheduled or where the commission anticipates that the proceeding will take less than 30 days, the commission may determine the procedure to be used in filing these requests. In cases where the schedule would not reasonably allow parties to identify issues within the timeframe set forth above, or where new issues emerge subsequent to the time set for filing, the commission may determine an appropriate procedure for accepting new or revised notices of intent.

(2) (A) The notice of intent to claim compensation shall include both of the following:

(i) A statement of the nature and extent of the customer's or eligible local government entity's planned participation in the proceeding as far as it is possible to set it out when the notice of intent is filed.

(ii) An itemized estimate of the compensation that the customer or eligible local government entity expects to request, given the likely duration of the proceeding as it appears at the time.

(B) The notice of intent may also include a showing by the customer or eligible local government entity that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included in the request submitted pursuant to subdivision (c).

(C) Within 15 days after service of the notice of intent to claim compensation, the administrative law judge may direct the staff, and may permit any other interested party, to file a statement responding to the notice.

(b) (1) If the customer's or eligible local government entity's showing of significant financial hardship was included in the notice filed pursuant to subdivision (a), the administrative law judge, in consultation with the assigned commissioner, shall issue within 30 days thereafter a preliminary ruling addressing whether the customer or eligible local government entity will be eligible for an award of compensation. The ruling shall address whether a showing of significant financial hardship has been made. A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.

(2) The administrative law judge may, in any event, issue a ruling addressing issues raised by the notice of intent to claim compensation. The ruling may point out similar positions, areas of potential duplication in showings, unrealistic expectation for compensation, and any other matter that may affect the customer's or eligible local government entity's ultimate claim for compensation. Failure of the ruling to point out similar positions or potential duplication or any other potential impact on the ultimate claim for compensation shall not imply approval of any claim for compensation. A finding of significant financial hardship

in no way ensures compensation. Similarly, the failure of the customer or eligible local government entity to identify a specific issue in the notice of intent or to precisely estimate potential compensation shall not preclude an award of reasonable compensation if a substantial contribution is made.

(c) Following issuance of a final order or decision by the commission in the hearing or proceeding, a customer who, or eligible local government entity that, has been found, pursuant to subdivision (b), to be eligible for an award of compensation may file within 60 days a request for an award. The request shall include at a minimum a detailed description of services and expenditures and a description of the customer's or eligible local government entity's substantial contribution to the hearing or proceeding. Within 30 days after service of the request, the commission staff may file, and any other party may file, a response to the request.

(d) The commission may audit the records and books of the customer or eligible local government entity to the extent necessary to verify the basis for the award. The commission shall preserve the confidentiality of the customer's or eligible local government entity's records in making its audit. Within 20 days after completion of the audit, if any, the commission shall direct that an audit report shall be prepared and filed. Any other party may file a response to the audit report within 20 days thereafter.

(e) Within 75 days after the filing of a request for compensation pursuant to subdivision (c), or within 50 days after the filing of an audit report, whichever occurs later, the commission shall issue a decision that determines whether or not the customer or eligible local government entity has made a substantial contribution to the final order or decision in the hearing or proceeding. If the commission finds that the customer or eligible local government entity requesting compensation has made a substantial contribution, the commission shall describe this substantial contribution and shall determine the amount of compensation to be paid pursuant to Section 1806.

SEC. 13. Section 1808 of the Public Utilities Code is amended to read:

1808. The commission shall deny any award to any customer or eligible local government entity that attempts to delay or obstruct the orderly and timely fulfillment of the commission's responsibilities.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2016

Governor